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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,499	08/14/2001	Christian D. Garcia	68.0194 CON	9552

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EXAMINER

HALFORD, BRIAN D

ART UNIT

PAPER NUMBER

3672

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/929,499	GARCIA ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Brian D Halford	3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 August 2001.

2a)  This action is FINAL.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 31-39 is/are allowed.

6)  Claim(s) 1-9, 11-14, 16-19, 40, 42-44 and 46 is/are rejected.

7)  Claim(s) 2,8-30,41 and 45 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 14 August 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.      6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 4 recites the limitation "the second segment" in line 9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-7, 40, 42-44 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Akkerman. Akkerman discloses a subsurface tubing safety apparatus for employment downhole in production wells. The invention of Akkerman contains, *inter alia*, a housing member having a longitudinal bore, a flapper valve disposed within the bore that is capable of achieving opened and closed positions and a flow tube or sliding sleeve that reciprocates within the longitudinal bore. Akkerman delineates the constituents of the invention in lines 21-67, 1-67, 1-67 and 1-3 of respective Columns 5, 6, 7 and 8; furthermore, Figures 5A through 5D lucidly depict the apparatus of Akkerman. As stated in lines 21-36 of Column 5, the apparatus housing or housing

member (21) consists of three elongated discrete segments: upper tubular member (22), intermediate tubular member (23) and lower tubular member (25). The housing member (21) of the apparatus possesses an interior longitudinal bore (41) that traverses the three individual segments. As depicted in Figure 5D, the lower tubular member or first segment (25) possess a smaller inner diameter than intermediate tubular member or second segment (23). Examination of Figures 5C and 5D reveals that intermediate tubular member or second segment (23) receives a vertically reciprocating flow tube or sliding sleeve (41) in addition to a flapper valve (35). As mentioned in lines 54-67 and 1-11 of respective Columns 5 and 6, the flow tube or sliding sleeve (40) assumes a lower position that forces the flapper valve (35) into an open position thereby permitting fluid flow; conversely, a torsion spring (45) forces the flapper valve (35) into a closed position when the flow tube or sliding sleeve (40) assumes an upper position. Furthermore, an opening coil spring (70), shown in Figures 6B and C, is employed as an additional mechanical expedient to ensure the opening the flapper valve (35). The spring (70) assumes a compressed position when the flow tube or sliding sleeve (40) is in the upper position. Lines 32-37 of Column 8 disclose that the coil spring assists in forcing the flapper valve (35) open. As mentioned in lines 65-66 of Column 5 and shown in Figure 5D, the flapper valve (35) engages the lower portion of the cylindrical flow tube or sliding sleeve (41); thus, the lower portion of the flow tube or sliding sleeve (40) serves as the valve seat.

Referring to Claims 40 and 42-44, Akkerman discloses an inherent method of selectively locking the flapper valve in either an open or closed position. As indicated in

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the abstract in addition to lines 61-67 and 1-40 of respective Columns 7 and 8 the use of keys (88) permit the flapper valve (35) to maintain a desired position. Furthermore, lines 24-25 of Column 8 indicate that increasing the pressure permits the closed flapper valve (35) to disengage from its position.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 1-2, 5-6, 8-9, 11-14 and 16-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-7, 12-16, 20-21, 24, 26-27, and 31-37 of copending Application No. 09/754464. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Allowable Subject Matter***

7. Claims 31-39 are allowed.

8. Claims 2, 8-30, 41 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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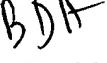
***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Halford whose telephone number is (703) 306-0556. The examiner can normally be reached on M-F 8:30-6:00; alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (703) 308-2151. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1020.

  
David Bagnell  
SPE  
Art Unit 3672

BDH   
November 30, 2002